

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. **5:18-cv-01880-JVS (MAA)** Date: **December 13, 2018**

Title **Elijah Lee Miller v. Unknown Defendant**

Present: The Honorable: MARIA A. AUDERO, U.S. Magistrate Judge

Cheryl Wynn
Deputy Clerk

N/A
Court Reporter / Recorder

Attorneys Present for Petitioner:
N/A

Attorneys Present for Respondent:
N/A

**Proceedings (In Chambers): Order Regarding Plaintiff's Voluntary Dismissal of
Complaint and Request for Habeas Corpus Form
(ECF No. 10)**

On September 4, 2018, Plaintiff Elijah Lee Miller ("Plaintiff") submitted a civil rights Complaint pursuant to 42 U.S.C. § 1983 ("Complaint," ECF No. 1).

Plaintiff neither paid the required \$400 filing fee nor filed an application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (See ECF No. 2.) On September 7, 2018, the Court ordered Plaintiff, within thirty (30) days, to submit the \$400 filing fee or application to proceed *in forma pauperis* with supporting documentation. (ECF No. 4.) Plaintiff filed a Request to Proceed Without Prepayment of Filing Fees with Declaration in Support on September 24, 2018 ("Request," ECF No. 6), which the Court denied on October 1, 2018 (ECF No. 8). The Court gave Plaintiff leave to re-submit the Request, with supporting documentation, within thirty (30) days from the date of the October 1, 2018 order. (*Id.*) To date Plaintiff has not re-submitted a revised application to proceed *in forma pauperis*.

On September 28, 2018, the Court issued an order dismissing the Complaint with leave to amend. (ECF No. 7.) The Court stated that if Plaintiff still wished to pursue this action, he must file a First Amended Complaint no later than thirty (30) days after the date of the order utilizing the standard civil rights complaint form (Form CV-066), which was attached to the order. (*Id.* at 1.) The Court also advised that if Plaintiff no longer wished "to pursue this action in its entirety or with respect to particular Defendants or claims, he voluntarily may dismiss all or any part of this action by filing a Notice of Dismissal in accordance with Federal Rule of Civil Procedure 41(a)(1)." (*Id.* at 2.) To date Plaintiff has not filed a First Amended Complaint.

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On December 11, 2018 the Court received a document from Plaintiff dated November 29, 2018 requesting that the Court dismiss Plaintiff's original Complaint. ("Notice," ECF No.10.) The Court shall construe the Notice as a Notice of Dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1).

The Notice also requests that the Court send Plaintiff a "new habeas corpus form." Accordingly, the Clerk is ORDERED to send Plaintiff the forms to file a petition for writ of habeas corpus.

It is so ordered.

Attachment:

Form Petition for Writ of Habeas Corpus

Initials of Preparer cw